



Friday, June 04, 2021

Shri Saurabh Gaur
Joint Secretary,
Ministry of Electronics and Information Technology (MeitY),
India
E-mail: saurabh.gaur@meity.gov.in

Cc: Shri Ajay Prakash Sawhney, Secretary, MeitY

Dear Sir,

SUBJECT: CHALLENGES IN PUBLIC PROCUREMENT OF SOFTWARE PRODUCTS AND SERVICES

Greetings! BSA | The Software Alliance (BSA) wishes you and your family good health and safety in these challenging times. We would like to take this opportunity to thank you for the work you have done and continue to do to help the country respond to the effects of this global pandemic.

BSA (www.bsa.org) is the leading advocate for the global software industry before governments and in the international marketplace. Its members are among the world's most innovative companies, creating software solutions that spark the economy and improve modern life.¹ With headquarters in Washington, DC, and operations in more than 30 countries, BSA pioneers compliance programs that promote legal software use and advocates for public policies that foster technology innovation and drive growth in the digital economy.

Recently, the Department of Promotion of Industry and Internal Trade (DPIIT) issued a [memorandum](#) clarifying the Public Procurement Preference to Make in India Order (**Memorandum**).² According to the Memorandum, suppliers offering 'imported' content cannot include after-sales service, support, training, installation, etc. as local value addition. This has added further complexity to the procurement of software products and services. The nature of software products and services makes it difficult to determine local content given the transnational supply chains and diversified nature of the software development and deployment processes.

¹ BSA's members include: Adobe, Altium, Amazon Web Services, Atlassian, Autodesk, Aveva, Bentley Systems, Box, Cisco, CNC/Mastercam, Dassault, DocuSign, IBM, Informatica, Intel, MathWorks, Microsoft, Nikon, Okta, Oracle, PTC, Rockwell, Salesforce, ServiceNow, Siemens Industry Software Inc., Slack, Splunk, Synopsys, Trend Micro, Trimble Solutions Corporation, Twilio, and Workday

² Public Procurement (Preference to Make in India) Order, Clarification for local content calculation PPP – MII Order - Reg, published by DPIIT, available at: https://dipp.gov.in/sites/default/files/Letter%20to%20All%20Ministries03042021_clarification.pdf

BSA members, who offer software products and services to the Government of India, continue to be impacted by the prescriptive qualifications set out in rules subsequent to the 'Public Procurement Preference to Make in India' Order (**Order**).³ Here are some of our concerns:

A. INCREASE IN AMBIGUITY FOR BOTH BUYER AND SERVICE PROVIDERS

Modern software technology supply chains are often transnational. Software development is often undertaken by global teams, involving out-sourced providers in different geographies and third-party licensed code. Hence, it is very difficult or impossible to determine the contribution of particular locations to the overall value of the software. The requirement to have a local content to qualify for the listing on [Government e-Marketplace \(GeM\)](#) creates unnecessary barriers. Failing to consider the specific nature of software products and services and how they are developed, and simply treating them as other kinds of goods or services, creates unnecessary difficulties in the procurement process for both buyers and sellers of software products and services, thus depriving software products and service providers of reasonable opportunities to compete for government procurement. For example, software product and service providers that cannot attest to meeting local content requirements are even excluded from listing on the GeM.

B. UNCERTAINTY DETERS INVESTMENT AND JOB CREATION

BSA member companies invest substantially in India and have extensive operations and world-class R&D centres developing cutting-edge technology solutions, products, and services in India. These activities and operations generate significant employment in India. Furthermore, employment by BSA members contributes to improving the skills of the digital economy workforce in India through both formal and on-the-job training. As such, BSA member companies are important partners for supporting India's efforts to become a leader in the global digital economy. By excluding or limiting many BSA member company software products and services from public procurement opportunities because they are unable to demonstrate "local content" as defined by the Order, the policy discourages investments and job creation in this important sector instead of promoting it.

C. LACK OF LOCAL CAPACITY IN SPECIALIZED SOFTWARE SERVICES

BSA members provide a wide range of specialized software products and services for which local capacity may not exist. By discouraging the procurement of software products and services by insisting on local content, the Order may prevent procuring entities from accessing specialized products and services available in the global market, which may in-turn result in operational disruptions. For example, a BSA member is engaged in business of sale of engineering simulation software. This product is used to simulate computer models of structures, electronics, or machine components for analysing strength, toughness, elasticity, temperature distribution, electromagnetism, fluid flow, and other attributes. These are niche areas of expertise where local expertise may not provide similar comfort, ease of integration to existing workflows or user experience. Failing to exempt software products and services from local content requirements could deprive procuring entities from acquiring the use of specialized solutions at the cutting-edge of technological innovation.

³ Public Procurement (Preference to Make in India), Order 2017 – Revision, published by DPIIT available at: <https://dipp.gov.in/sites/default/files/PPP%20MII%20Order%20dated%2016%2009%202020.pdf>

D. LACK OF FOCUS ON TECHNICAL MERITS AND QUALITY OF SERVICE COULD ADVERSELY IMPACT THE DIGITAL ECOSYSTEM

The rapid adoption of software-enabled solutions as a result of responding to and recovering from the COVID-19 pandemic presents an enormous and consequential opportunity to truly transform the public sector in India.⁴ The procurement of software products and services should be based on their technical merits, product quality, functionality, and efficacy, regardless of where such products and services are developed or manufactured. Focusing, through local content policies, on issues of origin rather than the product merits will limit the choice and use of cutting-edge innovation in India, and ultimately weaken the foundations of 'Digital India' as we march towards Prime Minister Modi's goal of \$1 trillion in value from the digital economy by 2025.

In addition, India is facing severe cybersecurity-related challenges. Cybersecurity is a global challenge and the software products and services offered by BSA members are engineered to withstand and recover from cyber attacks, which are growing in frequency and sophistication. Achieving world-class cybersecurity capabilities requires BSA members and others to invest heavily in research and development. Much of this work is undertaken in India-based R&D centres and conducted by Indian engineers, and local content requirements could potentially deprive India of access to cutting-edge technology for securing India's cyber safety.

BSA strongly encourages public procurement policies that establish an environment of certainty for companies to drive increased investments in developing the best solutions for India and that do not divert limited resources to compliance with local procurement mandates. While we support incentives to stimulate manufacturing and development of goods and services in India, and efforts to promote the modernization of India's workforce, applying local content requirements to software products and services will not effectively achieve these goals and instead will undermine investments, employment generation, and the procurement of high-quality software services and products to enable India's digital transformation.

We are aware that MeitY is cognizant of, and considering, the issues concerning the Memorandum. We are eager to share our global perspective with MEITY in order to contribute to evolving a best-in-class framework for encouraging the software ecosystem in India.

BSA and its member companies have a long-standing commitment to India, and we are eager to serve as resources, and welcome any opportunity to contribute to a prosperous, inclusive, and secure digital economy for India.

Yours sincerely,

Venkatesh Krishnamoorthy

Country Manager

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⁴ BSA Response & Recovery Agenda, accessible at: https://www.bsa.org/files/policy_filings/05272020bsaresponserecoveryagenda4.pdf